

§ 301.6323(d)-1

26 CFR Ch. I (4-1-12 Edition)

accordance with § 301.6323(f)-1, notice of lien is properly filed with respect to L's delinquent tax liability. On September 8, 1970, X obtains actual notice of the tax lien filing. On September 14, 1970, the documents creating X's security interest are executed and recorded, N bank's lien for its construction loan is released, and X makes the required disbursements to N bank. Under local law, X's security interest is protected against a judgment lien arising on September 4, 1970 (the time of tax lien filing) out of an unsecured obligation.

(ii) Because X's security interest arose by reason of a disbursement made under a written agreement entered into before tax lien filing, which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of N bank, a person other than the taxpayer, and because X's security interest is valid under local law against a judgment lien arising as of the time of the tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to X's security interest to the extent of the disbursement to N bank. The obligatory disbursement is protected under section 6323(c)(4) even if X is not subrogated to N bank's rights or X's agreement is not itself a real property construction financing agreement.

[T.D. 7429, 41 FR 35504, Aug. 23, 1976]

§ 301.6323(d)-1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph (a), a contract right (as defined in paragraph (c)(2)(i) of § 301.6323(c)-1) is subject, at the time of tax lien filing, to the lien imposed by

section 6321 if the contract has been made by such time. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323(c)-1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of subparagraph (2) of this paragraph (a), a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)-1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323(h)-1 for definitions of the terms “security interest” and “tax lien filing,” respectively. See paragraph (a) of § 301.6323(i)-1 for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(b) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. On December 1, 1967, an assessment is made against A with respect to his delinquent tax liability. On January 2, 1968, A enters into a written agreement with B whereby B agrees to lend A \$10,000 in return for a security interest in certain property owned by A. On January 10, 1968, in accordance with § 301.6323(f)-1 notice of the tax lien affecting the property is filed. On February 1, 1968, B, without actual notice or knowledge of the tax lien filing, disburses the loan to A. Under local law, the security interest arising by reason of the disbursement is entitled to priority over a judgment lien arising January 10, 1968 (the date of tax lien filing) out of an unsecured obligation. Because the disbursement was made before the 46th day after tax lien filing, because the disbursement was made pursuant to a written agreement entered into before tax lien filing, and because the resulting security interest is protected under local law against a judgment lien arising as of the date of tax lien filing out of an unsecured obligation, B's \$10,000 security interest has priority over the tax lien.

Example 2. Assume the same facts as in example 1 except that when B disburses the \$10,000 to A on February 10, 1968, B has actual knowledge of the tax lien filing. Because the disbursement was made with actual knowledge of tax lien filing, B's security interest does not have priority over the tax lien even though the disbursement was made before the 46th day after the tax lien filing. Furthermore, B is not protected under

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§ 301.6323(a)-1(a) as a holder of a security interest because he had not parted with money or money's worth prior to the time the notice of tax lien was filed (January 10, 1968) even though he had made a firm commitment to A before that time.

[T.D. 7429, 41 FR 35505, Aug. 23, 1976]

§ 301.6323(e)-1 Priority of interest and expenses.

(a) *In general.* If the lien imposed by section 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of his interest or to collect, by foreclosure or otherwise, the amount due him from the property subject to his lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to his lien or security interest if both his lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of paragraph (b) of § 301.6323(i)-1, to the rights of the holder of the sales tax lien, he will also be entitled to any additional protection afforded by section 6323(i)(2).

[T.D. 7429, 41 FR 35506, Aug. 23, 1976]

§ 301.6323(f)-1 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 301.6323(a)-1 shall be filed as follows:

(1) *Under State laws—(i) Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed